In The High Court Of Uttaranchal At Nainital

Writ Petition No. 5011 (Ms) Of 2001

(Old No. 969 Of 1984)

Shri Pritam Singh,
S/O Shri Dilbag Singh,
R/O Govindpur, Tehsil Gadarpur,
District- Nainital.

.....Petitioner

Versus

1. State of U.P.
2. 1st Addl. District Judge,
   Nainital.
3. Nayab Tehsildar, Ceiling Nainital.....Respondents.

Mr. Sudhir Singh, Advocate For The Petitioner.
Learned Standing Counsel For The Respondents.

Dated: 03.05.2006

Hon'ble Rajesh Tandon, J.

Urgency Application No. 4964 of 2006 is allowed. Both the parties have agreed that let the matter be finally disposed of.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 19.11.1983 passed by the respondent no. 2 (Annexure No. 9 to the writ petition). Further prayer has been made for a writ of mandamus commanding the respondents not to proceed with the case filed by the State in ceiling Appeal No. 109 of 1982 pending before the 1st Addl. District and Sessions Judge, Nainital.

During the proceedings of the imposition of ceiling on land holding act, the petitioner has filed the objections. The petitioner has filed an appeal and thereafter, the matter went to the High Court and also before the Apex Court. The Apex Court has directed that the petitioner's objection relating to the unirrigated portion of land be considered and decided by the Prescribed Authority and the Prescribed Authority by its judgment and order dated 18.06.1982 held that the contention of the relating to some of his land being unirrigated was correct.

The petitioner has submitted that the State has filed belated appeal on a different folio that was originally applied by putting the seal, which was not available in the office of the Prescribed Authority as per file, the appellate Authority may examine the fact and if the appeal was time barred sufficient opportunity may be given to the State to file an application for condonation of delay. According to the case of the petitioner, the copy of the judgment was illegally issued.

The District Judge shall appoint an officer, who shall examine the matter and if the appeal was not legally filed, he shall give an opportunity to the State to file the same and thereafter, decide the same on merits after deciding its maintainability. If the appeal is found in time, the same shall be decided on merits otherwise the Presiding Officer shall decide the appeal in accordance with law.

Writ petition is disposed of accordingly. No order as to costs.

(Rajesh Tandon, J.)

03.05.2006

Rathour